

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

S.G. and S.G., as parents and guardians of L.G.,)
a minor,)

Plaintiffs,)

v.)

ROCKFORD BOARD OF EDUCATION and)
KENNETH HELD, in His Capacity as Principal)
of Rolling Green Elementary School,)

Defendants.)

Case No.: 08-C-50038

Judge: Kapala
Magistrate Mahoney

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

NOW COME the Defendants, the ROCKFORD BOARD OF EDUCATION, SCHOOL DISTRICT NO. 205, WINNEBAGO-BOONE COUNTIES, ILLINOIS (incorrectly identified as “Rockford Board of Education” and hereinafter referred to as “the Board”) and KENNETH HELD (hereinafter “Principal”) in his Capacity as Principal of Rolling Green Elementary School, by and through their attorney, Lori L. Hoadley of HINSHAW & CULBERTSON LLP, and for their Motion for Judgment on the Pleadings pursuant to Fed.R.Civ.P. 12(c), state as follows:

1. Plaintiffs, S.G. and S.G. (“Parents”) as the parents of a minor, L.G., have sued the Rockford Board of Education, District No. 205 (“the Board”), and its principal of Rolling Green Elementary School, Kenneth Held, in his official capacity, (“Principal”), seeking compensation for alleged violations of federal and state law arising from a failure to prevent and/or adequately remedy alleged sexual harassment by one of L.G.’s first-grade classmates.

Count I – Title IX

2. Count I alleges violations of Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-1688 in the context of a hostile learning environment, however, Plaintiffs fail to allege conduct by the Defendants that was clearly unreasonable in light of known circumstances.

3. Plaintiffs also fail to allege conduct by the Defendants that caused L.G. to be subjected to severe, pervasive, and objectively offensive conduct at school that was sufficiently severe as to cause a concrete, negative effect on her education, and therefore sufficient to constitute actionable Title IX sexual harassment.

4. Plaintiffs also fail to allege conduct by the Defendants that was tantamount to recklessness.

Count II – 42 U.S.C. § 1983; Illinois Abused and Neglected Child Reporting Act

5. Count II alleges Defendants violated 42 U.S.C. § 1983 and the Illinois Abused and Neglected Child Reporting Act, 325 ILCS 5/1 *et seq.*, alleging that Defendants failed to protect L.G. from sexual harassment by a first-grade classmate and failed to report the peer harassment to authorities as allegedly required under the Illinois Abused and Neglected Child Reporting Act.

6. Plaintiffs' § 1983 claims are preempted by Title IX.

7. In addition, Plaintiffs cannot prevail on their § 1983 claims because Plaintiffs do not allege a widespread policy or practice leading to a constitutional deprivation, fail to allege the Board had actual or constructive notice of an alleged violation of a constitutional right, and fail to allege that Principal Held was a policy-maker.

8. Plaintiffs lack standing to assert a violation of the Illinois Abused and Neglected Child Reporting Act, which does not provide for a private cause of action.

Count III – Willful and Wanton Misconduct/Deliberate Indifference

9. Count III alleges willful and wanton misconduct and deliberate indifference, arising from Defendants' alleged omissions in evaluating records of a transfer student and disseminating information to school personnel about the student records. Count III further alleges Defendants failed to implement appropriate policies to respond to Plaintiffs' alleged complaints to school personnel.

10. Inasmuch as the alleged omissions constitute acts of discretion and the implementation of policy, Count III is barred by the Illinois Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* Moreover, Section 2-201 of the Illinois Tort Immunity Act does not provide an exception to immunity for willful and wanton conduct, thus Plaintiffs' allegations that the Defendants' conduct was willful and wanton are irrelevant.

Count IV - Negligence

11. Count IV alleges negligence and is the subject of a separately filed Motion to Dismiss.

WHEREFORE, for the reasons set forth herein, in the accompanying Memorandum of Law in Support of the Motion for Judgment on the Pleadings, and in Defendants' Memorandum of Law in Support of its Motion to Dismiss Count IV, the Defendants, ROCKFORD BOARD OF EDUCATION, SCHOOL DISTRICT NO. 205, WINNEBAGO-BOONE COUNTIES, ILLINOIS, and KENNETH HELD, in his official Capacity as Principal of Rolling Green Elementary School, respectfully request that this Court enter an Order either dismissing this case, or granting judgment in its favor and against Plaintiffs, plus costs of suit.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

The undersigned certifies that on May 6, 2008, a copy of the foregoing was electronically served via the U.S. District Court CM/ECF E-Filing System upon the following:

S.G. and S.G. v. Rockford Board of Education, School District No. 205

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